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LINCOLN COUNTY RECORDER
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LESLIE BOUCHER

DECISION AND ORDER OF DISTRICT COURT CASE #CR-0819002, AFFIRMING
JUDGEMENT OF CONVICTION AND SENTENCE CASE #M19-02

Title of Document

Grantees address and mail tax statement:

SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT 1
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



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Case No. CR-0819002

Dept. No.

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IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF LINCOLN

* * * * *

GEORGE BENDINSKIS,
Appellant,

-vs-

DECISION AND ORDER

GEORGE JOSEPH BENDINSKIS,
Respondent.

Appellant was convicted of thirty-five (35) counts of Failure to Provide Proper Sustenance to an Animal in the Meadow Valley Justice Court. A timely appeal was filed and the matter has been briefed. Oral argument was received by the Court and the matter was submitted.

DISCUSSION

Appellant argues that the State failed to prove all elements of the offenses charged. Specifically, Appellant claims the State did not establish that he either owned the



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horses or owed a duty of care to the horses.¹ Appellant also argues that the Court improperly considered matters outside of the record to establish Mr. Bendinskis' ownership.²

Even if the Court considered matters outside the record, the question on appeal is whether after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. In a criminal case, a judgment supported by substantial evidence will not be disturbed by a reviewing court.³

COUNT II

This count involved a blind pony mare confined in a horse trailer, which was ultimately euthanized. With respect to this count, Sgt. Cowley testified that Deputy Sheriff Garza

"advised me that he had gone out to the Bendinskis residence, which is north of Pioche, just off the newly developed road, and when he got there he observed seven horses, one of which was penned up in a horse trailer."⁴

Sgt. Cowley then traveled to that location and actually observed the horses.

¹Incredibly, the State acknowledges its burden to prove the charges but then argues that the Court could properly take judicial notice that the horses belonged to the Defendant. This Court is skeptical of the power of any court to take judicial notice of the existence of an essential element of a criminal charge. Secondly, even if judicial notice could be taken, it is clear that the procedures and foundation required by NRS 47.130 - 47.170 were not met.

²The Court noted "Unfortunately, when living in a small town, it becomes pretty much common knowledge who lives where, and what uses those lands are being used for, and I believe when Sergeant Cowley got the information that she received from the neighboring persons adjoining land, she was familiar enough and had prior knowledge that Mr. Bendinskis did occupy that property, and she was able to develop a case against Mr. Bendinskis." Trial transcript, p. 138, lines 17-24. These assumptions by the Court are not supported by testimony and cannot form a basis for her decision.

³McNair v. State, 108 Nev. 53, 825 P.2d 571 (1992) (citations omitted).

⁴Trial transcript, p. 17, lines 4-8.



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She later testified that the euthanized horse was taken from the George Bendinskis property north of Pioche.⁵ This testimony is sufficient to satisfy a finding that Mr. Bendinskis either owned or owed a duty of care to the horse described in Count II.

COUNTS 20 - 35

These counts all concern sixteen (16) horses located in a barren pasture south of Meadow Valley Ranch through Rainbow Canyon. Sgt. Cowley testified that at this location "there was 16 other ponies . . . that belonged to George Bendinskis . . ." ⁶

This testimony is sufficient to establish that Mr. Bendinskis owned or owed a duty of care to these horses.

COUNTS 1, 3-19

These eighteen (18) horses were all located at the old Conway Ranch. No witness was offered by the State to specifically say the Defendant owned these horses.⁷

Although no direct evidence was offered to prove Defendant's ownership of the horses at the old Conway Ranch, the record does contain sufficient evidence to prove this element. First, Michael Fewell testified that when he arrived at the location, he saw Mr. Bendinskis trying to help a horse that was down.⁸

Mr. Fewell also testified that he asked Mr. Bendinskis "why he didn't take

⁵Trial transcript, p. 26, lines 16-18.

⁶Trial transcript, p. 15, lines 7-8.

⁷Even though statements of Diane Britton were allowed, these were offered only to describe what dispatch told Sgt. Cowley. It is unknown why the State did not call Ms. Britton to testify.

⁸Trial transcripts, p. 38, line 24; p. 39, lines 1-11.



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these horses to the sale."⁹ In response, Mr. Bendinskis said "that he took a horse over there recently and couldn't get any money for it, very, very little."¹⁰ If an incriminating statement is heard and understood by an accused, and his response justifies an inference that he agreed or adopted the admission, then evidence of the statement is admissible at trial.¹¹

Implicit in the conversation between Mr. Fewell and Mr. Bendinskis is that Mr. Bendinskis owned the horses and should have done something with them.

Mr. Bendinskis efforts to save a horse and his response to Mr. Fewell's inquiries provide sufficient evidence to support a finding that he owned a duty of care to these horses.

CONCLUSION

Based on the foregoing, the Court does find that sufficient evidence exists in the record to support the judgment entered. The Court does emphasize, however, that had the State been more careful in its questioning of witnesses, this entire appeal would likely have been avoided.¹²

Good cause appearing,

IT IS HEREBY ORDERED that the judgment entered in the Meadow Valley

⁹Trial transcript, p. 40, lines 4-6.

¹⁰Trial transcript, p. 40, lines 7-9.

¹¹See Harrison v. State, 96 Nev. 347 (1980); citing Maginnis v. State, 93 Nev. 173 (1977); NRS 51.035(3)(b).

¹²This fact was conceded by the State at oral argument.


SEVENTH JUDICIAL DISTRICT COURT
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Justice Court is **AFFIRMED**.

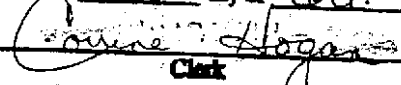
DATED this 12th day of February, 2003.



DISTRICT COURT JUDGE

This document to which this certificate is attached is a full, true and correct copy of the original, on file and record in the County Clerks Office, Pioche Nevada.

In witness whereof, I have hereunto set my hand and affixed the Seal of the Seventh Judicial District Court in and for the County of Lincoln, State of Nevada, this 31st day of Oct. 2005



Clerk

Deputy Clerk